IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 145/2000

Smt. Farly Vaz,
Represented by Goa Trade &
Commercial Workers' Union,
Panaji, Goa. ..... Petitioner.

V/s.

1) Presiding Officer,
Industrial Tribunal, Government of Goa,
having his Office at
Junta House, 2nd Floor,
Panaji, Goa.

2) M/s Narcinva Damodar Naik,
having its Administrative Office as well
as Workshop at Arlem, Margao, Goa. ..... Respondents.

Mr. J. P. Mulgaonkar, Advocate for the petitioner.

Mr. M. S. Sonak, Advocate for respondent No.2.

CORAM : S.K. SHAH, J.

DATE : 12th January, 2007.

ORAL JUDGMENT :

Heard learned Counsel for the parties. By this writ petition, the petitioner challenges the Award passed by the Industrial Tribunal, Goa dated 31st January, 2000, whereby it rejected the reference and held that

the action of the Management of the respondent in transferring the workman from Arlem, Margao to Mapusa with effect from 2.4.1990 was legal and justified.

2. It is undisputed that the petitioner was employed by Order dated 22.2.1973 by the respondent as Stenographer-cum-Receptionist and she had been working as such in the said post at Margao. By letter dated 26.3.1990, she was transferred with effect from 2.4.1990 to the respondent's establishment at the address “Kochkar Building, Opposite Janki Shankar Hotel, Mapusa, Goa”. By this transfer letter, it was clarified that the petitioner would carry out the work related to the respondent's proposed establishment at 41/42, Mapusa Industrial Estate, Mapusa and after the said establishment becomes operational, she would be posted there.

3. It is further undisputed that immediately on receipt of this letter, the petitioner proceeded on leave on 27th and 28th March, 1990. Thereafter, the petitioner addressed a letter dated 28.3.1990 to the respondent stating therein that since she refused on 28.2.90 to sign a blank paper purported to be a wage settlement, she was being harassed and victimized by transferring her. The said letter of the petitioner was replied

to by the respondent by reply dated 4.4.1990, wherein it was clarified that her services were transferred to the aforesaid establishment at Kochakar Building and that she was required to do the work relating to the respondent's establishment being set up at 41/42, Mapusa Industrial Estate. It was further clarified that it is only after the new establishment becomes operational, she would be posted there. It was also mentioned in its reply that the transfer was effected taking into account exigencies of business and other factors. In the same reply, the petitioner's contention raised in her letter dated 28.3.90 that she was being victimized or harassed as she refused to sign the wage settlement, was answered and it was mentioned therein that majority of the employees had voluntarily accepted the wage settlement on 7.3.90, draft of which had been typed by herself and the terms of the wage settlement had been discussed/negotiated with the employees to which the petitioner was a party.

4. Then followed a letter from the Union, of which the petitioner was a member and that letter was dated 16.4.1990, wherein the Union pointed out that the petitioner's transfer was with a view to harass her and it was malafide and requested the respondent to withdraw the petitioner's transfer. As the respondent did not withdraw the petitioner's transfer, the reference came to be made, being Reference No.IT/20/91.

5. In the reference, the petitioner alone led evidence. On the side of the respondent, one of the employees of the respondent, namely Mr. Nestor Gomes was examined. The learned Tribunal set out certain issues including whether the petitioner's transfer was necessitated on account of business exigency and whether the reference made by the Government was not legal and proper.

6. The learned Tribunal during the course of the Award, considered mainly two points, whether there was no establishment of the respondent at Mapusa and whether the petitioner's transfer was mala fide.

7. The learned Tribunal held that there was an establishment of the respondent at Mapusa and that the petitioner's transfer was not mala fide and, therefore, passed the impugned Award, rejecting the reference which is being assailed in this writ petition.

8. This writ petition is filed under Articles 226 and 227 of the Constitution of India. The law laid down by the Apex Court in the case of ***Syed Yakoob vs. K.S. Radhakrishnan and ors.,*** AIR 1964 SC 477 is that the scope for consideration in such writ petition is limited. Reappreciation of the evidence is not permissible and the Judgment of the Tribunal could

be set aside only if it is found to be perverse i.e. the findings of the Tribunal being based on no evidence.

9. The learned Counsel for the petitioner vehemently submitted that the findings of the Tribunal were perverse. In fact there was overwhelming evidence to show that the respondent-employer did not have any establishment at Mapusa where she was transferred to work as Stenographer cum Receptionist. He submits that, in fact, at the place of transfer, there was a shop known as Pradeep Enterprises which was not of the respondent. He further submits that the witness of the respondents stated that the respondent's shop was in fact situated at the same place where Pradeep Enterprises is situated and produced the Shops and Establishment Licence. He submits that mere registration of the shop under Shops and Establishment, would not indicate that actually the shop was in existence at that place. On the point of harassment and malafide, he submitted that the findings of the Tribunal were not based on evidence and it were perverse and were required to be set aside.

10. On the other hand, the learned Counsel for the respondent supported the Award passed by the Tribunal and submitted that it is an Award on consideration of all the aspects of the matters. He also submitted

that it is possible that some other view of the matter was possible, however, this Court in exercise of writ jurisdiction is not supposed to reappreciate the evidence and, therefore, cannot set aside the award.

11. I have been taken through the Award as also the evidence led by the petitioner as also the respondent.

12. On the first point, the witness of the respondent has given overwhelming evidence to show the existence of the said shop. He has also produced the Registration Certificate of the said shop, which indicated that the shop was registered and the registration was renewed every year from the year 1985. It is true that the registration certificate that was produced was for the period from 1.1.1994 to 31.12.1994. The certificate, in fact, indicated that the registration was being renewed from year to year, right from the year 1985, clearly indicating that the registration of the shop was renewed from 1985. It is difficult to accept the submission made on behalf of the petitioner that the registration of the shop would not indicate existence of the shop. In fact, it is the existing shop that gets registered. Hence, there is no question of the shop being registered which is not in existence. Therefore, there was overwhelming evidence to indicate that the shop was in existence right from 1985 and it still existed right up to

1994 when the evidence was led by the respondent. It, therefore, clearly indicated that the shop was in existence when the petitioner was transferred to that shop.

13. On the point of malafides/victimization, it may be noted that the said allegation was made by the petitioner. Therefore, it was obvious that the burden was heavily on her to prove that aspect. In that regard, she has, in fact, led evidence of herself and did not lead any evidence in support of her evidence. All that the petitioner stated in her evidence was that she was transferred merely because she did not sign the last page of wage settlement which was brought by Mr. Gomes on 28.2.90. Besides these bare words of the petitioner, there was no other evidence. In the evidence of Mr. Gomes, he has denied this. As a matter of fact, it was clarified in the evidence of Mr. Gomes that the draft settlement was typed and prepared by the petitioner herself. It has also been brought in evidence of Mr. Gomes that he did not approach the petitioner with the last blank page or the wage settlement dated 28.2.1990 and as such, there was no question of last page being taken to her for her signature. The Tribunal took into consideration the other fact that 24 other workmen those were working in the establishment of the respondent had not consented for the settlement and signed the wage settlement agreement. Therefore, the

Tribunal held that there was no question of victimization of the petitioner.

14. The allegation of the petitioner is that her transfer was malafide and that she was transferred at a shop which was not at all in existence and this indicated malafide transfer. However, that is not correct. As discussed above, the shop of the respondent was very much in existence. It is not in dispute that at the relevant time the respondent was considering setting up of the proposed establishment at 41/42, at Mapusa Industrial Estate. It is necessary to note that the respondents are dealers in motor vehicles and they wanted to establish their own establishment at Mapusa Industrial Estate. Although the petitioner was transferred to the shop premises, she was asked to do work related to their proposed establishment at 41/42, Mapusa Industrial Estate. According to the petitioner, she was made available a small table and a chair. However, nothing turns on this. The work of the petitioner was as stenographer and that work could be done on a small table and chair. It was vehemently submitted that only shop of Pradeep Enterprises was situated at the premises at Mapusa. However, as discussed above and as explained by the witness of the respondent, Pradeep Enterprises were the sister concern of the respondent where the respondent had their office establishment. The Mapusa shop was having two shutters and the shop was divided by shelves. This aspect was

also tried to be raised by learned Counsel for the petitioner. However, what should be the extent of the shop and how it should be situated for the purpose of business, is the concern of the respondent. There is nothing wrong if two business are conducted in the same premises and further it is the party's concern.

15. In the result, I do not find any perversity or illegality in the Award passed by the learned Industrial Tribunal. Consequently, there is no merit in the writ petition.

Before parting with this writ petition, it may be noted that it is for the management to consider taking into account exigencies of business and other factors, about the transfers of its employees. In the present case, since the respondents were considering establishment of their business in the Mapusa Industrial Estate, it was obvious that the respondents were expected to have lot of correspondence in relation thereto and they thought it fit to transfer the petitioner to that place It is further to be noted that the petitioner was having experience of 17 years and, therefore, it was quite proper for the respondent to choose the petitioner to do that work. Even in the order of appointment of the petitioner, there is a clear term whereunder she would be required to work at the

respondent's other offices or other places of business. As such, the writ petition is dismissed.

S.K. SHAH, J.

ssm.